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**From:** Hurlid, Kathy [Hurlid.Kathy@epa.gov]  
**Sent:** 11/27/2018 9:09:19 PM  
**To:** Calli, Rosemary [Calli.Rosemary@epa.gov]  
**CC:** Kupchan, Simma [Kupchan.Simma@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Laycock, Kelly [Laycock.Kelly@epa.gov]; Nagrani, Kavita [Nagrani.Kavita@epa.gov]  
**Subject:** Re: expedited rulemaking/Retained Waters List

I need to that is

Sent from my iPhone

On Nov 27, 2018, at 4:01 PM, Calli, Rosemary <Calli.Rosemary@epa.gov> wrote:

## Ex. 5 Deliberative Process (DP)

**From:** Hurlid, Kathy  
**Sent:** Tuesday, November 27, 2018 3:52 PM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>  
**Subject:** RE: expedited rulemaking/Retained Waters List

## Ex. 5 Deliberative Process (DP)

**From:** Kupchan, Simma  
**Sent:** Tuesday, November 27, 2018 2:06 PM  
**To:** Hicks, Matt <Hicks.Matthew@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>  
**Cc:** Hurlid, Kathy <Hurlid.Kathy@epa.gov>  
**Subject:** RE: expedited rulemaking/Retained Waters List

Thanks, Rosemary and Matt. Matt, I think it would probably take less time to convey orally than to brief up, so I'm fine with doing that, if you are.

Rosemary, thanks for raising the good point about modifications

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

**From:** Hicks, Matt  
**Sent:** Tuesday, November 27, 2018 1:56 PM

**To:** Calli, Rosemary <Calli.Rosemary@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>  
**Subject:** RE: expedited rulemaking/Retained Waters List

FYI that the Regional Counsel's office is okay with our proposal but recommends that we share it orally unless OGC has strong objections.

I can be available to talk after 3:00 if that works for others.

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**From:** Calli, Rosemary  
**Sent:** Tuesday, November 27, 2018 11:49 AM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>  
**Subject:** expedited rulemaking/Retained Waters List

Hello –

On the expedited rulemaking/Retained Waters List updates matter, I've made some suggested edits in the shared document. I'm pretty flexible to discuss except for the national 404(g) call 2-3 today; I know Matt is unavailable noon-1:30..

I took a look at the Corps-FDEP MOA to refresh my memory on what is already in there about coordination on changes such as these. There isn't anything on advance notice of changes to the Retained Waters List (List), but there are a couple of elements of which I'd lost sight.

It identifies multiple triggers for modifying the List, some of them beyond Corps' control, and I would expect most of these to be infrequent. III.B., however, essentially explains the case-by-case approach that seems inevitable with the List in its current form (named water bodies with no geographic point of reference or head of navigation). A decision triggers an update of the List (and GIS layer) within 30 calendar days. This could happen frequently, especially early on after assumption. So...

Johnnie asked a good question.

## Ex. 5 Deliberative Process (DP)

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## **Ex. 5 Deliberative Process (DP)**

~ Rosemary

\*\*\*Kelly, Kavita – Sorry, I should have had you in the loop on this. We're working on responding to Florida on a question about how we handle changes to the Retained Waters List, which has implications for Florida needing to update its regulations. A writeup of the process, which largely reflects the assumption regulations, is here:

## **Ex. 6 Personal Privacy (PP)**